

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

LUIS SANTAMARIA ESCOBAR

Plaintiff,

VS.

ARROW TRUCK SALES, INC.

Defendant.

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CIVIL ACTION NO. 5:20-cv-216

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1331, Defendant Arrow Truck Sales, Inc. (hereinafter referred to as “Arrow Truck” or “Defendant”) files this Notice of Removal hereby removing this action from the 45th Judicial District Court of Bexar County, Texas to the United States District Court for the Western District of Texas, San Antonio Division. Removal is based on federal question jurisdiction. *See* 28 U.S.C. §§ 1331, 1367 (a) 1441(a).

I. INTRODUCTION

1. Plaintiff Luis Santamaria Escobar (hereinafter referred to as “Plaintiff”) filed an Original Petition, Jury Demand and Request for Disclosures (**Exhibit 4**) in this case in the 45th Judicial District Court for Bexar County, Texas on January 27, 2020.

2. Defendant was served with process on January 31, 2020. (**Exhibit 5**)

3. This Notice of Removal is being filed within thirty (30) days of service of summons upon the Defendant.

II. GROUNDS FOR REMOVAL

4. This is a case over which this Court has jurisdiction pursuant to 28 U.S.C. § 1331, and which may be removed to this Court by Defendant due to federal question jurisdiction pursuant to 28 U.S.C. § 1441(a).

5. A case arises under federal law if a complaint establishes that either (1) federal law creates the cause of action or (2) the plaintiff's right to relief necessarily depends on the resolution of a substantial question of federal law. *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 689-90 (2006); *Singh v. Duane Morris LLP*, 538 F.3d 334, 337-38 (5th Cir. 2008).

6. The presence or absence of a federal question is generally governed by the "well-pleaded-complaint" rule, which states that federal jurisdiction exists only when a federal question is presented on the face of the complaint. *Rivet v. Regions Bank*, 522 U.S. 470, 475 (1998). However, exceptions exist to prevent circumventing federal jurisdiction through careful phrasing of a plaintiff's claims.

7. Under the artful-pleading doctrine, a plaintiff is barred from framing its suit under state law and omitting federal claims.; *Rivet*, 522 U.S. at 475; *Bernhard v. Whitney Nat'l Bank*, 523 F.3d 546, 551 (5th Circuit 2008). When federal law completely preempts a plaintiff's state-law claim, removal is proper. *Id.*

8. In his Original Petition, Jury Demand and Request for Disclosures Plaintiff expressly made claims against Defendant under The Age Discrimination in Employment act of 1967 ("ADEA") 29 U.S.C §621 and Title VII of the Civil Rights Act of 1964, ("Title VII") 42 U.S.C. §2000e See **Exhibit 4, ¶¶1, 19-27**. As Plaintiff's right

to relief necessarily depends on a ruling regarding the applicability of 29 U.S.C §62142 and 42 U.S.C. §2000e, federal question jurisdiction is established.

9. Also, pursuant to 28 U.S.C. §1367(a) this Court has supplemental jurisdiction over claims included in Plaintiff's Original Petition, Jury Demand and Request for Disclosure pursuant to the Texas Commission on Human Rights Act ("TCHRA"), Tex. Lab. Code Chapter 21.

10. Federal Courts may exercise supplemental jurisdiction over state law claims within a federal complaint if those claims are part of the same case or controversy as the federal claim. That is, that there must be a common nucleus of operative facts between the state and federal claims so plaintiff would be expected to try them in one proceeding. *Carnegie Mellon University v. Cohill*, 484 US 343, 349 (1988).

11. In this case Plaintiff claims age and national origin discrimination by Defendant under ADEA, Title VII and the TCHRA for the same set of facts and disclosures allegedly made by the Plaintiff.

III. VENUE

12. Venue for removal is proper in this district and division under 28 U.S.C. § 1441(a) because this district and division embrace the Texas State District Courts of Bexar County, Texas, the forum in which the removed action was previously pending.

IV. PROCEDURAL REQUIREMENTS

13. Pursuant to 28 U.S.C. §1446(a) the Notice of Removal has the following attachments:

EXHIBIT 1 Index of Matters Being Filed

EXHIBIT 2 State Court Docket Sheet

EXHIBIT 3 List of all Counsel of Record including addresses, telephone numbers and parties represented

EXHIBIT 4 Original Petition, Jury Demand and Request for Disclosures

EXHIBIT 5 Process of Service

14. Pursuant to 28 U.S.C. § 1446(d), written notices of filing of this Notice of Removal will be given to all adverse parties promptly after the filing of same.

15. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice of Removal will be filed with the District Clerk for the 45th Judicial District Court of Bexar County, Texas promptly after filing of same.

V. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Defendant Arrow Truck respectfully requests that the above-captioned action now pending in the 45th Judicial District Court of Bexar County, Texas, be removed to the United States District Court for the Western District of Texas, San Antonio Division.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document has been served upon Plaintiff's counsel on the 24th day of February 2020 via electronic mail to:

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Attorneys for Plaintiff

A handwritten signature in blue ink that reads "Yanice Colon-Pol". The signature is written in a cursive, flowing style.

YANICE COLON-POL